

**U.S. District Court
Eastern District of New York (Brooklyn)
CIVIL DOCKET FOR CASE #: 1:18-cv-02445-NGG-JO**

Make the Road New York et al v. U.S. Department of Homeland Security et al
Assigned to: Judge Nicholas G. Garaufis
Referred to: Magistrate Judge James Orenstein
Cause: 05:552 Freedom of Information Act

Date Filed: 04/25/2018
Jury Demand: None
Nature of Suit: 895 Freedom of Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

Make the Road New York

represented by **Joshua Rosenthal**
National Immigration Law Center
3450 Wilshire Blvd.
#108-62
Los Angeles, CA 90010
202-609-9979
Email: rosenthal@nilc.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Justin B. Cox
National Immigration Law Center
Po Box 170208
Atlanta, GA 30317
678-279-5441
Fax: 213-639-3911
Email: cox@nilc.org
PRO HAC VICE
ATTORNEY TO BE NOTICED

Trudy Sumiko Rebert
National Immigration Law Center
Po Box 721361
Jackson Heights, NY 11372
646-867-8793
Fax: 213-639-3911
Email: rebert@nilc.org
ATTORNEY TO BE NOTICED

Plaintiff

Make the Road Connecticut

represented by **Joshua Rosenthal**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Justin B. Cox
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Trudy Sumiko Rebert
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

U.S. Department of Homeland Security

represented by **Rachael Westmoreland**
U.S. Department of Justice

20 Massachusetts Ave, Nw
Washington, DC 20530
202-514-1280
Fax: 202-616-8470
Email: rachael.westmoreland@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Office of the Secretary of Homeland Security

represented by **Rachael Westmoreland**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

U.S. Citizenship and Immigration Services

represented by **Rachael Westmoreland**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

U.S. Department of Justice

represented by **Rachael Westmoreland**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Office of the Attorney General

represented by **Rachael Westmoreland**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Office of the Solicitor General

represented by **Rachael Westmoreland**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Office of Legal Counsel

represented by **Rachael Westmoreland**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

U.S. Department of Justice – Civil Division

represented by **Rachael Westmoreland**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/25/2018	<u>1</u>	COMPLAINT against All Defendants filing fee \$ 400, receipt number 0207-10383422 Was the Disclosure Statement on Civil Cover Sheet completed –YES,, filed by Make the Road Connecticut, Make the Road New York. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Proposed Summons U.S. Department of Homeland Security, # <u>3</u> Proposed Summons Office of the Secretary of Homeland Security, # <u>4</u> Proposed Summons United States Citizenship and Immigration Services, # <u>5</u> Proposed Summons U.S. Department of Justice, # <u>6</u> Proposed Summons Office of the Attorney General, # <u>7</u> Proposed Summons Office of the Solicitor General, # <u>8</u>

		Proposed Summons Office of Legal Counsel, # <u>9</u> Exhibit A, # <u>10</u> Exhibit B, # <u>11</u> Exhibit C, # <u>12</u> Exhibit D, # <u>13</u> Exhibit E, # <u>14</u> Exhibit F, # <u>15</u> Exhibit G, # <u>16</u> Exhibit H, # <u>17</u> Exhibit I, # <u>18</u> Exhibit J, # <u>19</u> Exhibit K, # <u>20</u> Exhibit L, # <u>21</u> Exhibit M, # <u>22</u> Exhibit N) (Rebert, Trudy) (Entered: 04/25/2018)
04/25/2018		Case assigned to Judge Pamela K. Chen and Magistrate Judge Steven M. Gold. Please download and review the Individual Practices of the assigned Judges, located on our website . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. (Bowens, Priscilla) (Entered: 04/26/2018)
04/25/2018	<u>2</u>	Summons Issued as to All Defendants, U.S. Attorney and U.S. Attorney General (Bowens, Priscilla) (Entered: 04/26/2018)
04/26/2018	<u>3</u>	In accordance with Rule 73 of the Federal Rules of Civil Procedure and Local Rule 73.1, the parties are notified that <i>if</i> all parties consent a United States magistrate judge of this court is available to conduct all proceedings in this civil action including a (jury or nonjury) trial and to order the entry of a final judgment. Attached to the Notice is a blank copy of the consent form that should be filled out, signed and filed electronically only if all parties wish to consent. The form may also be accessed at the following link: http://www.uscourts.gov/uscourts/FormsAndFees/Forms/AO085.pdf . You may withhold your consent without adverse substantive consequences. Do NOT return or file the consent unless all parties have signed the consent. (Bowens, Priscilla) (Entered: 04/26/2018)
04/26/2018	<u>4</u>	This attorney case opening filing has been checked for quality control. See the attachment for corrections that were made, if any. (Bowens, Priscilla) (Entered: 04/26/2018)
04/26/2018	<u>5</u>	Notice of Related Case (Bowens, Priscilla) (Entered: 04/26/2018)
05/09/2018		ORDER REASSIGNING CASE. Case reassigned to Judge Nicholas G. Garaufis and Magistrate Judge James Orenstein for all further proceedings. Judge Pamela K. Chen, Magistrate Judge Steven M. Gold no longer assigned to case Please download and review the Individual Practices of the assigned Judges, located on our website . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Ordered by Chief Judge Dora Lizette Irizarry on 5/9/2018. (Bowens, Priscilla) (Entered: 05/09/2018)
05/14/2018	<u>6</u>	Proposed Summons. Re <u>1</u> Complaint,,, by Make the Road Connecticut, Make the Road New York (Rebert, Trudy) (Entered: 05/14/2018)
05/14/2018	<u>7</u>	Proposed Summons. Re <u>1</u> Complaint,,, by Make the Road Connecticut, Make the Road New York (Rebert, Trudy) (Entered: 05/14/2018)
05/14/2018	<u>8</u>	Proposed Summons. Re <u>1</u> Complaint,,, by Make the Road Connecticut, Make the Road New York (Rebert, Trudy) (Entered: 05/14/2018)
05/14/2018	<u>9</u>	Proposed Summons. Re <u>1</u> Complaint,,, by Make the Road Connecticut, Make the Road New York (Rebert, Trudy) (Entered: 05/14/2018)
05/14/2018	<u>10</u>	Proposed Summons. Re <u>1</u> Complaint,,, by Make the Road Connecticut, Make the Road New York (Rebert, Trudy) (Entered: 05/14/2018)
05/14/2018	<u>11</u>	Proposed Summons. Re <u>1</u> Complaint,,, by Make the Road Connecticut, Make the Road New York (Rebert, Trudy) (Entered: 05/14/2018)
05/14/2018	<u>12</u>	Proposed Summons. Re <u>1</u> Complaint,,, by Make the Road Connecticut, Make the Road New York (Rebert, Trudy) (Entered: 05/14/2018)
05/15/2018	<u>13</u>	Amended (Reissued) Summons as to Office of Legal Counsel, Office of the Attorney General, Office of the Secretary of Homeland Security, Office of the Solicitor General, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, U.S. Department of Justice. (Attachments: # <u>1</u> Office of the AG, # <u>2</u> Secretary Homeland, # <u>3</u> Solicitor General, # <u>4</u> Citizenship and Immigration, # <u>5</u> DOJ, # <u>6</u> Homeland) (Lee, Tiffeny) (Entered: 05/15/2018)
05/21/2018	<u>14</u>	MOTION for Leave to Appear Pro Hac Vice <i>on behalf of Justin B. Cox</i> Filing fee \$ 150, receipt number 0207-10448388. by Make the Road Connecticut, Make the Road New York. (Attachments: # <u>1</u> Affidavit in Support, # <u>2</u> Certificates of Good Standing)

		(Cox, Justin) (Entered: 05/21/2018)
05/22/2018		ORDER granting <u>14</u> Motion for Leave to Appear Pro Hac Vice -- Attorney Justin B. Cox, Esq. is permitted to argue or try this case in whole or in part as counsel or advocate. By May 29, 2018, Mr. Cox shall register for ECF. Registration is available online at the EDNY's homepage. Once registered, Mr. Cox shall file a notice of appearance and ensure that he receives electronic notification of activity in this case. Mr. Cox shall also ensure that the \$150 admission fee be submitted to the Clerk's Office. Ordered by Magistrate Judge James Orenstein on 5/22/2018. (Salvador, Anjali) (Entered: 05/22/2018)
05/22/2018	<u>15</u>	NOTICE of Appearance by Justin B. Cox on behalf of All Plaintiffs (notification declined or already on case) (Cox, Justin) (Entered: 05/22/2018)
05/30/2018	<u>16</u>	SUMMONS Returned Executed by Make the Road Connecticut, Make the Road New York. Office of Legal Counsel served on 4/30/2018, answer due 5/21/2018; Office of the Attorney General served on 4/30/2018, answer due 5/21/2018; Office of the Secretary of Homeland Security served on 5/2/2018, answer due 5/23/2018; Office of the Solicitor General served on 4/30/2018, answer due 5/21/2018; U.S. Citizenship and Immigration Services served on 5/3/2018, answer due 5/24/2018; U.S. Department of Homeland Security served on 5/2/2018, answer due 5/23/2018; U.S. Department of Justice served on 4/30/2018, answer due 5/21/2018. (Cox, Justin) (Entered: 05/30/2018)
05/31/2018	<u>17</u>	Letter <i>MOTION for scheduling conference</i> by Make the Road Connecticut, Make the Road New York (Cox, Justin) (Entered: 05/31/2018)
06/04/2018	<u>18</u>	ANSWER to <u>1</u> Complaint,,, by All Defendants. (Westmoreland, Rachael) (Entered: 06/04/2018)
06/13/2018	<u>19</u>	REPLY in Opposition re <u>17</u> Letter <i>Motion</i> filed by All Defendants. (Westmoreland, Rachael) (Entered: 06/13/2018)
06/25/2018	<u>20</u>	NOTICE of Appearance by Joshua Rosenthal on behalf of All Plaintiffs (aty to be noticed) (Attachments: # <u>1</u> Certificate of Service) (Rosenthal, Joshua) (Entered: 06/25/2018)
06/25/2018	<u>21</u>	AMENDED COMPLAINT against Office of Legal Counsel, Office of the Attorney General, Office of the Secretary of Homeland Security, Office of the Solicitor General, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, U.S. Department of Justice, filed by Make the Road Connecticut, Make the Road New York. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P, # <u>17</u> Certificate of Service). (Rebert, Trudy) (Main Document 21 replaced to corrected Amended Complaint per phone request on 6/26/2018). (Layne, Monique). Modified on 6/26/2018. (Layne, Monique). (Entered: 06/25/2018)
06/26/2018	<u>22</u>	Proposed Summons. Re <u>21</u> Amended Complaint,,, by Make the Road Connecticut, Make the Road New York (Rosenthal, Joshua) (Entered: 06/26/2018)
06/27/2018	<u>23</u>	Summons Issued re <u>21</u> Amended Complaint as to U.S. Department of Justice, U.S. Attorney and U.S. Attorney General. (Lee, Tiffeny) (Entered: 06/27/2018)
07/05/2018	<u>24</u>	Letter MOTION for Extension of Time to File Answer re <u>21</u> Amended Complaint,,, by Office of Legal Counsel, Office of the Attorney General, Office of the Secretary of Homeland Security, Office of the Solicitor General, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, U.S. Department of Justice. (Westmoreland, Rachael) (Entered: 07/05/2018)
07/06/2018	<u>25</u>	ORDER granting <u>24</u> Motion for Extension of Time to Answer re <u>21</u> Amended Complaint, Defendants' answer due 7/16/2018. So Ordered by Judge Nicholas G. Garaufis on 7/5/2018. (Lee, Tiffeny) (Entered: 07/06/2018)
07/12/2018	<u>26</u>	SUMMONS Returned Executed by Make the Road Connecticut, Make the Road New York. U.S. Department of Justice – Civil Division served on 6/27/2018, answer due 8/27/2018. (Rosenthal, Joshua) (Entered: 07/12/2018)

07/16/2018	<u>27</u>	ANSWER to <u>21</u> Amended Complaint,,, by All Defendants. (Westmoreland, Rachael) (Entered: 07/16/2018)
09/14/2018	<u>28</u>	STATUS REPORT <i>JOINT</i> by Make the Road Connecticut, Make the Road New York (Rosenthal, Joshua) (Entered: 09/14/2018)
09/26/2018	<u>29</u>	Second MOTION for Hearing <i>for a Status Conference</i> by Make the Road Connecticut, Make the Road New York. (Rosenthal, Joshua) (Entered: 09/26/2018)
10/10/2018	<u>30</u>	NOTICE of Change of Address (Westmoreland, Rachael) (Entered: 10/10/2018)
10/10/2018	<u>31</u>	RESPONSE in Opposition re <u>29</u> Second MOTION for Hearing <i>for a Status Conference</i> filed by All Defendants. (Westmoreland, Rachael) (Entered: 10/10/2018)
10/11/2018		ORDER re: Plaintiffs' <u>29</u> Application for Status Conference: The Application is GRANTED. The parties are directed to confer and contact the court's Deputy at 718-613-2545 to schedule the status conference. At the status conference, the parties can address the areas of dispute identified in Plaintiffs' Application, including whether a global scheduling order is necessary. Ordered by Judge Nicholas G. Garaufis on 10/11/2018. (Haddad, Andrew) (Entered: 10/11/2018)
10/30/2018	<u>32</u>	STATUS REPORT <i>Second Joint Status Report</i> by Make the Road New York (Rosenthal, Joshua) (Entered: 10/30/2018)
11/02/2018		Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Status Conference held on 11/1/2018. Counsel for all parties present. The parties reported on the progress of Defendants' document review and production and addressed the areas of dispute identified in Plaintiff's <u>29</u> September 26, 2018, letter. The court directed Plaintiffs to file a proposed global scheduling order by no later than November 5, 2018, and directed Defendant U.S. Department of Homeland Security to file a declaration regarding its resource constraints by no later than November 9, 2018. The parties also reported that Defendant Office of the Attorney General plans to update Plaintiffs regarding the progress of its document review and production by November 8, 2018; the parties shall advise the court once that update is made. (Court Reporter Georgette Betts) (Haddad, Andrew) (Entered: 11/02/2018)
11/05/2018	<u>33</u>	MOTION to Expedite <i>FOIA Production and Request for Global Scheduling Order</i> by Make the Road Connecticut, Make the Road New York. (Rosenthal, Joshua) (Entered: 11/05/2018)
11/06/2018		ORDER re: Plaintiffs' <u>33</u> Request for a Global Scheduling Order: Defendants are DIRECTED to file a response to Plaintiff's proposed schedule by no later than 5:00 P.M. on November 9, 2018. If Defendants do not consent to Plaintiffs' proposed schedule, Defendants' response should include an alternative proposed schedule. Defendants' response should also address whether Defendant U.S. Department of Homeland Security ("DHS") should be required (as Plaintiffs request) to prioritize review of the 35 documents that were submitted to Judge Alsup in <i>Regents of the University of California v. DHS</i> , No. 17-cv-5211 (N.D. Cal.). The court notes that, in addition to Defendants' response to Plaintiffs' proposed schedule, DHS should also submit a declaration regarding its resource constraints by no later than November 9, 2018, pursuant to the court's order at the November 1, 2018 status conference. Ordered by Judge Nicholas G. Garaufis on 11/6/2018. (Haddad, Andrew) (Entered: 11/06/2018)
11/09/2018	<u>34</u>	RESPONSE in Opposition re <u>33</u> MOTION to Expedite <i>FOIA Production and Request for Global Scheduling Order</i> filed by All Defendants. (Attachments: # <u>1</u> Exhibit 1-Holzer Declaration) (Westmoreland, Rachael) (Entered: 11/09/2018)
11/16/2018	<u>35</u>	MEMORANDUM & ORDER, For the foregoing reasons, the court GRANTS IN PART Plaintiffs' Motion for a Global Scheduling Order (Dkt. <u>33</u>). DHS and USCIS are DIRECTED to produce all outstanding records on a rolling monthly basis by no later than February 28, 2019. OIP is DIRECTED to complete its search for records potentially responsive to Plaintiffs' FOIA request, confer with Plaintiffs, and propose a production schedule to the court by no later than December 21, 2018; if Plaintiffs do not agree with OIP's proposed schedule, they shall respond by no later than January 4, 2019. When the court sets a deadline for OIP to complete production, the court will simultaneously set a deadline for the submission of dispositive motions. The court declines to order Defendants to produce <u>Vaughn</u> indices at this time; Plaintiffs may

		renew their request at a later date. So Ordered by Judge Nicholas G. Garaufis on 11/16/2018. (Lee, Tiffeny) (Entered: 11/16/2018)
12/21/2018	<u>36</u>	NOTICE by Office of the Attorney General, U.S. Department of Justice <i>of Filing Proposed Procesing Schedule</i> (Westmoreland, Rachael) (Entered: 12/21/2018)
12/26/2018	<u>37</u>	NOTICE by Make the Road Connecticut, Make the Road New York <i>Plaintiffs Proposed Production Schedule for Defendant OIP</i> (Rosenthal, Joshua) (Entered: 12/26/2018)
01/11/2019	<u>38</u>	MOTION to Stay by Office of Legal Counsel, Office of the Attorney General, Office of the Secretary of Homeland Security, Office of the Solicitor General, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, U.S. Department of Justice, U.S. Department of Justice – Civil Division. (Westmoreland, Rachael) (Entered: 01/11/2019)
01/14/2019		ORDER: Defendants' <u>38</u> Motion to Stay is GRANTED. All FOIA processing deadlines as applied to the U.S. Department of Homeland Security ("DHS") and the U.S. Department of Justice Office of Information Policy ("OIP") are stayed until Congress has restored appropriations to DHS and the Department of Justice ("DOJ"). Defendants are DIRECTED to inform the court and all parties by no later than two days after the date on which funding is restored for DHS and DOJ. Afterward, the court will set a deadline for OIP to complete production (<u>see</u> Dkts. <u>36</u> , <u>37</u>) and decide whether, and by how much time, to extend the parties' other deadlines. Ordered by Judge Nicholas G. Garaufis on 1/14/2019. (Haddad, Andrew) (Entered: 01/14/2019)
01/30/2019	<u>39</u>	NOTICE by Office of Legal Counsel, Office of the Attorney General, Office of the Secretary of Homeland Security, Office of the Solicitor General, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, U.S. Department of Justice, U.S. Department of Justice – Civil Division <i>to the Court of Restoration of Appropriations</i> (Westmoreland, Rachael) (Entered: 01/30/2019)
01/31/2019	<u>40</u>	NOTICE by Make the Road Connecticut, Make the Road New York re <u>39</u> Notice(Other), <i>in Response to Proposed Deadlines</i> (Rosenthal, Joshua) (Entered: 01/31/2019)
02/01/2019		ORDER re: Defendants' <u>39</u> Requests to Extend Production Deadlines: The Court GRANTS the U.S. Department of Homeland Security's ("DHS") request to extend its production deadline until April 4, 2019 to account for the 35–day lapse in appropriations for DHS. Additionally, DHS is DIRECTED to submit an explanation, by no later than February 8, 2019, for why it did not produce documents in November or December 2018. (<u>See</u> Pls. Jan. 31, 2019 Resp. (Dkt. <u>40</u>) para. 3.) The court DENIES the U.S. Department of Justice Office of Information Policy's ("OIP") request for a June 10, 2019 production deadline. Instead, OIP is DIRECTED to complete production of all outstanding records by no later than April 19, 2019, and to produce records on a rolling monthly basis. Furthermore, the parties are DIRECTED to file any dispositive motions by no later than May 20, 2019; responses must be filed by no later than June 3, 2019; and replies, if any, must be filed by no later than June 10, 2019. The parties need not request a pre–motion conference before filing a dispositive motion, notwithstanding the undersigned's Individual Rule III(A)(2). Ordered by Judge Nicholas G. Garaufis on 2/1/2019. (Haddad, Andrew) (Entered: 02/01/2019)
02/08/2019	<u>41</u>	NOTICE by U.S. Department of Homeland Security (Westmoreland, Rachael) (Entered: 02/08/2019)